

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY, OHIO**

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|----------------------|---|-----------------------------|
| STATE OF OHIO, | : | MEMORANDUM OPINION |
| Plaintiff-Appellee, | : | |
| -vs- | : | CASE NO. 2012-G-3069 |
| DOUGLAS T. ELLIOTT, | : | |
| Defendant-Appellant. | : | |

Criminal Appeal from the Court of Common Pleas, Case No. 11 C 000112.

Judgment: Appeal dismissed.

David P. Joyce, Geauga County Prosecutor, Courthouse Annex, 231 Main Street, Chardon, OH 44024 (For Plaintiff-Appellee).

Douglas T. Elliott, pro se, PID: A621748, Madison Correctional Institution, P.O. Box 740, London, OH 43140 (Defendant-Appellant).

MARY JANE TRAPP, J.

{¶1} On April 5, 2012, appellant, Douglas T. Elliott, filed a notice of appeal from the trial court’s January 6, 2012 judgment entry in which he was convicted and sentenced for the offense of sexual battery.

{¶2} App.R. 4(A) states in part:

{¶3} “A party shall file the notice of appeal required by App.R. 3 within thirty days of the later of entry of the judgment or order appealed. ***”

{¶4} In this case, appellant’s notice of appeal was due by February 6, 2012. Since it was not filed until April 5, 2012, it is untimely by almost two months.

{¶5} App.R. 5(A) states, in relevant part:

{¶6} “(1) After the expiration of the thirty day period provided by App.R. 4(A) for the filing of a notice of appeal as of right, an appeal may be taken by a defendant with leave of the court to which the appeal is taken in the following classes of cases:

{¶7} “(a) Criminal proceedings;

{¶8} “(b) Delinquency proceedings; and

{¶9} “(c) Serious youthful offender proceedings.

{¶10} “(2) A motion for leave to appeal shall be filed with the court of appeals and shall set forth the reasons for the failure of the appellant to perfect an appeal as of right. Concurrently with the filing of the motion, the movant shall file with the clerk of the trial court a notice of appeal in the form prescribed by App.R. 3 and shall file a copy of the notice of the appeal in the court of appeals. ***”

{¶11} In the present case, appellant has neither complied with the thirty-day rule set forth in App.R. 4(A) nor sought leave to appeal under App.R. 5(A). Thus, this court is without jurisdiction to consider this appeal.

{¶12} The appeal is dismissed, sua sponte, pursuant to App.R. 4(A).

TIMOTHY P. CANNON, P.J.,

DIANE V. GRENDALL, J.,

concur.